

REGISTERED  
SPEED POSTGOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
DEPARTMENT OF REVENUEOffice of the Principal Commissioner RA and  
Ex-Officio Additional Secretary to the Government of India  
8th Floor, World Trade Centre, Cuffe Parade,  
Mumbai- 400 005

F NO. 195/99/14-RA / 232

Date of Issue: 07/12/2018

ORDER NO. 406 CX (SZ) / ASRA / Mumbai DATED 30.11.2018 OF THE GOVERNMENT OF INDIA PASSED BY SHRI ASHOK KUMAR MEHTA, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE CENTRAL EXCISE ACT, 1944.

Applicant : M/s. Molex India Pvt. Ltd. Bangalore.

Respondent: Commissioner of Central Excise, Bangalore  
Commissionerate.

Subject : Revision Application filed, under section 35EE of the Central Excise Act, 944 against the Order-in-Appeal No.721/2013-CE dated 31.12.2013 passed by the Commissioner of Central Excise (Appeals-I), Bangalore.

## ORDER

This revision application has been filed by M/s Molex (India) Private Limited, Plot No.6A, Sadaramangala Industrial Area, Kadugodi, Bangalore-560 067 (herein after referred to as the "applicant") against the Order In Appeal No.721/2013 dated 31.12.2013 passed by the Commissioner of Central Excise (Appeals-I), Bangalore.

2. Brief facts of the case are that the applicant are registered with the Central Excise for manufacture and export of parts of connectors and electronic connectors and other IT products classifiable under Chapter 85 of the CETA, 1985. They are availing the facility of CENVAT credit under the Cenvat Credit Rules 2004. During April'2009 and May'2009 the applicant had acquired moulds for the purpose of manufacturing connectors and parts of connectors for Robert Bosch, GMBH located outside India. The cost of the these moulds was reimbursed to the applicant by Bosch Ltd. Bangalore on behalf of the Robert Bosch, GMBH. The moulds were exclusively used for manufacture of connectors and connectors' parts for export outside India to Robert Bosch, GMBH. During the course of the Internal audit by the department it was observed that the applicant had not apportioned the value of the these moulds to the transaction value of the manufactured goods . The applicant instead of apportioning the cost of the mould to the unit price of the manufactured goods paid excise duty on the entire value of the moulds through available cenvat balance. The total amount paid by them was 5,24,064/-. Subsequently the applicant observed the goods manufactured using these moulds have actually been exported and excise duty was not payable on such goods which was paid erroneously. Accordingly the applicant filed a refund claim seeking the refund of the amount paid on exported goods. On verification of the claim it was observed that that the applicant have been clearing goods both for home consumption as well as export. They were discharging duty on exported goods under claim for rebate also. Thus it was not clear for the documents submitted whether the said moulds have been exclusively used for manufacture of export goods.

3. Accordingly a Show Cause Notice dated 30.05.2011 was issued to applicant as to why the refund claim filed by them should not be rejected under Section 11 B of Central Excise Act, 1944. The Original Adjudicating authority after following the principle of natural justice in his Order in Original observed that there is no error in payment of duty on the value of the moulds as the applicant is liable to pay the duty on the value of the moulds since the same has not been apportioned to the value of finished goods the duty paid by them is in accordance to section 4 of Central Excise Act, 1944 read with Rule 6 of Central Excise Valuation Rules, 2000. Thus the applicant are not eligible for refund of excise duty paid.

4. Aggrieved, by the impugned order, the appeal before Commissioner (Appeals) who vide Order in Appeal No.721/2013-CE dated 31.12.2013 rejected the Appeal filed by the applicant.

5. Being aggrieved by said order, the applicant filed the present Revision Application under Section 35EE of the Central Excise Act, 1944 on the following main grounds:-

- 5.1 the impugned order is contrary to the facts, law and evidence on record apart from being contrary to the text and tenor of CENVAT Credit Rules, 2004 ('CCR, 2004') and Central Excise Act. The order is therefore bad in law and not tenable.
- 5.2 the order has not adduced any reasons as to why the decisions relied by the Applicant are not applicable to the present case. The CCE (A) has not followed the rule of judicial discipline by not following the law laid down by Hon'ble CESTAT and Higher Courts of laws. The Applicant submits that the OIA is a non speaking one and hence liable to be set aside.
- 5.3 on the facts and in the circumstances of the case and without prejudice to any other grounds taken herein, CCE(A) has grossly erred in upholding the O-I-0 which travels beyond SCN and thereby rejecting the refund claim.
- 5.4 the adjudicating authority in the SCN issued proposed to reject the refund claim on the following grounds:
  - there is no documentary evidence available showing usage of the said moulds exclusively for manufacturing exported goods.

- the Applicant are exporting goods under a claim of rebate, grant of refund would amount to double benefit in the form of refund as well as rebate.

5.5 The Applicant in response to these allegations had provided documentary evidences at the time of submission of reply to SCN which was duly accepted by the adjudicating authority. The adjudicating authority however rejected the refund claim on the ground that the duty paid by the Applicant was not erroneous which was liable to be paid as per the provisions of law .The Applicant submits that the SCN nowhere discussed about whether the duty paid by the Applicant was payable or not. Therefore, the adjudicating authority has travelled beyond the allegations made in the SCN and has rejected refund claim on the ground which was not at all raised in the SCN.

The Applicant in this connection places reliance on the following decisions:

- Commissioner of Customs, Mumbai Vs Toyo Engineering India Limited 2006 (201) ELT 513 SC
- Commissioner of Central Excise, Nagpur Vs Ballarpur Industries Ltd 2007 (215) ELT 489 SC
- Tilrode Chem Pvt Ltd Vs Commissioner of Central Excise, Bangalore 2011 (264) ELT 306 (Tri- Bang)

5.6 CCE (A) has upheld the rejection of refund claim made vide the impugned O-I-0 which as per submissions made above is clearly bad in law. The Applicant submits that CCE (A) in the impugned O-I-A has not considered their legal plea made in this regard. Therefore the impugned O-1-A is a non speaking one to this extent and liable to be set aside on this ground alone. The Applicant further submits that, as the impugned O-1-0 is bad in law, the impugned O-I-A passed is also bad in law and liable to set aside in the interest of justice and fair play.

5.7 on the facts and in the circumstances of the case the CCE(A) has grossly erred and was wholly unjustified in holding that the Applicants have rightly paid duty on the value of exports and are not eligible to refund under Section 11B of the Central Excise Act, 1944

5.8 on the facts and in the circumstances of the case and without prejudice to any other grounds taken herein, the CCE(A) has grossly erred in rejecting the refund as it has led to taxing export of goods which is not permitted under Central Excise statute.

- 5.9 though value of additional consideration needs to be added to the value of finished goods in terms of Rule 6 of Central Excise Valuation Rules, 2000, such goods are permitted to be exported without payment of duty under Rule 19 of the Central Excise Rules, 2002 or can be exported under rebate. In either of the cases, the underlying principal is to zero rate the export of goods. The Applicant in the connection places reliance on Circular No. 807/4/2005-CX dated 10-2-2005 issued by Central Board of Excise and Customs wherein at Para 5 it is clarified as follows: It is the policy of the Government to grant relief from element of domestic taxes on goods which are exported.
- 5.10 the goods manufactured by them using the mould are exported on payment of excise duty under claim of rebate. The excise duty paid on additional consideration for export of goods is also eligible for rebate.
- 5.11 refund under Section 11 B of the Central Excise Act, 1944 includes rebate of duty of excise on excisable goods exported out of India and hence they are eligible for refund of excise duty paid on the additional consideration for export of goods under rebate.
- 5.12 They place reliance on STERLITE INDUSTRIES (I) LTD Vs CCE 2009 (236) E.L.T. 143 (Tri. - Chennai); RE: CASPRO EXPORTS 2010 (261) E.L.T. 790 (Commissioner Appeals)
- 5.13 rejection of the refund claim has led to levy of duty on exported goods which clearly defeats the very intention of the Government which is to provide relief to assessee from domestic taxes in respect of goods which are exported.
6. A personal hearing held in this case was attended by V. Sripadu, Manager, Commercials and Shri T.R. Venkateswaran, Director, Tax and Regulatory Service and they reiterated the submissions filed in the Revision Applications and pleaded that the Order in Appeal be set aside and Revision Application be allowed.
7. Government has carefully gone through the relevant case records available in case files, oral & written submissions and perused the impugned Order-in-Original and Order-in-Appeal.
8. Government observes that during April 2009 and May 2009 the applicant had acquired moulds for the purpose of manufacturing connectors

and parts of connectors for Robert Bosch, GMBH located outside India. The cost of these moulds was reimbursed to the applicant by Bosch Ltd. Bangalore on behalf of the Robert Bosch, GMBH. The moulds were exclusively used for manufacture of connectors and connectors' parts for export outside India to Robert Bosch, GMBH. During the course of the Internal audit by the department it was observed that the applicant had not apportioned the value of the these moulds to the transaction value of the manufactured goods. The applicant instead of apportioning the cost of the mould to the unit price of the manufactured goods, paid excise duty on the entire value of the moulds through available Cenvat balance. The total amount paid by them was Rs. 5,24,064/-. Subsequently the applicant observed the goods manufactured using these moulds have actually been exported and excise duty was not payable on such goods which was paid erroneously. Accordingly the applicant filed a refund claim seeking the refund of the amount paid on exported goods. The said refund claim was rejected by the Original adjudicating authority and also upheld by the Commissioner (Appeals) on the grounds mentioned at para 3 supra. It is the contention of the applicant that the goods manufactured by them using the mould are exported on payment of excise duty under claim of rebate. The excise duty paid on additional consideration for export of goods is also eligible for rebate and refund under Section 11 B of the Central Excise Act, 1944 includes rebate of duty of excise on excisable goods exported out of India and hence they are eligible for refund of excise duty paid on the additional consideration for export of goods under rebate.

9. Before taking up the case for decision on merits, Government finds it proper to first examine the issue of jurisdiction maintainability of this revision application before Central Government under the provisions of Section 35EE of the Central Excise Act, 1944, Hence, Government proceeds to discuss relevant statutory provisions.

9.1 **“Section 35EE. Revision by Central Government.** - (1) *The Central Government may, on the application of any person aggrieved by any order passed under Section 35A, where the order is of the nature referred to in the first proviso to sub-section (1) of Section 35B, annul or modify such order :”*

## 9.2 Section 35B(1) of Central Excise Act, 1944.

*"35B. Appeals to the Appellate Tribunal. - (1) Any person aggrieved by any of the following orders may appeal to the Appellate Tribunal against such order -*

*(a) a decision or order passed by the [Commissioner of Central Excise] as an adjudicating authority;*

*(b) an order passed by the [Commissioner (Appeals)] under section 35A;*

*(c) .....*

*(d) .....*

*[Provided that no appeal shall lie to the Appellate Tribunal and the Appellate Tribunal shall not have jurisdiction to decide any appeal in respect of any order referred to in clause (b) if such order relates to, -*

*(a) a case of loss of goods, where the loss occurs in transit from a factory to a warehouse or to another factory, or from one warehouse to another, or during the course of processing of the goods in a warehouse or in storage, whether in a factory or in a warehouse;*

*(b) a rebate of duty of excise on goods, exported to any country or territory outside India or on excisable materials used in the manufacture of goods which are exported to any country or territory outside India;*

*(c) goods exported outside India (except to Nepal or Bhutan) without payment of duty;*

*[(d) credit of any duty allowed to be utilised towards payment of excise duty on final products under the provisions of this Act or the rules made thereunder and such order is passed by the Commissioner (Appeals) on or after the date appointed under section 109 of the Finance (No. 2) Act, 1998:]*

*Provided further that the appellate Tribunal may, in its discretion, refuse to admit an appeal in respect of an order referred to in clause (b) or clause (c) or clause (d) where -*

*(i) in any disputed case, other than a case where the determination of any question having a relation to the rate of duty of excise or to the value of goods for purposes of assessment is in issue or is one of the points in issue, the difference in duty involved or the duty involved; or*

(ii) *the amount of fine or penalty determined by such order.*"

10. From the above, it is clear that Government's power of revision is restricted to cases which are of the nature referred to in the first proviso to Section 35B(1) referred to in para 9 supra. It is only when duty is leviable at the time of export (in case goods are cleared for export under bond) and/or duty is actually paid before actual export that question of rebate of duty on goods exported can be raised. In other words, rebate on exports presupposes duty leviability on clearance of goods.

11. Government further observes that for claiming the Rebate of duty on inputs used in the manufacture of goods exported, rebate application is required to be filed under Rule 18 of Central Excise Rules, 2002 and Notification No. 21/2004 CE (NT) dated 6.9.2004, which should contain a claim of rebate, ARE-2 numbers and dates, corresponding invoice numbers and dates, amount of rebate on each ARE-2 and its calculations, Original copy of ARE-2, self-attested copy of Shipping Bill (EP copy) and Bill of Lading/ Airway Bill, and duplicate copy of Central Excise input Invoice under which Central Excise duty was paid/ accounted as payable for goods used in the export product, details of sanction given by AC/DC for input-output ratio, calculation/ details of use of material in the export good etc.

12. Government in the instant case observes that the claim dated 28.02.2011 filed by the applicant, is in Form R, which is prescribed for claiming refund of Central Excise duty (excess payment of duty) subject to safeguards, conditions and limitations. Moreover, the amount of Rs.5,24,064/- in respect of which the applicant has filed a refund claim, was not paid by the applicant during the time of exports but at a much later stage on being pointed out by the Audit. Further, the said claim is neither filed under Rule 18 of Central Excise Rules, 2002 and Notification No. 21/2004 CE (NT) dated 6.9.2004 nor accompanied by the documents mentioned thereunder (refer para 12 above).

13. Thus, Government notes that the claim filed by the applicant is not of rebate of duty paid but of refund of credit of specified duty paid on additional consideration for export of goods at a later stage and therefore the

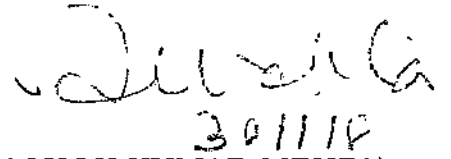


issue arising out of impugned Order in Appeal is required to be agitated before proper legal forum, i.e. Tribunal.

14. In view of the above discussions Government holds that the instant Revision Application is not maintainable under Section 35EE ibid and the revision application is liable to be dismissed.

15. The revision application thus stands dismissed being non-maintainable for lack of jurisdiction. The appellant is at liberty to agitate the matter before appropriate forum.

16. So, ordered.



(ASHOK KUMAR MEHTA)

Principal Commissioner & Ex-Officio  
Additional Secretary to Government of India

ORDER No. 456/2018-CX (SZ) /ASRA/Mumbai DATED 30.11.2018

To,

M/s Molex (India) Pvt Ltd,  
Plot No. 6(A), Sadaramangala Industrial Area,  
Kadugodi, Bangalore 560 067

Copy to :

1. The Commissioner of GST & CX, East, 2<sup>nd</sup> Floor, TTMC BMTC Bus Stand Complex, Hal Airport Road, Domluru, Bengaluru-560071.
2. The Commissioner of GST & CX (Appeals-I) Traffic & Transit Management Centre: BMTC Bus Stand, Hal Airport Road, Domluru, Bengaluru - 560 071
3. The Deputy/Assistant Commissioner, GST & CX, East, 2<sup>nd</sup> Floor, TTMC BMTC Bus Stand Complex, Hal Airport Road, Domluru, Bengaluru-560071.
4. Sr.P.S. to AS (RA), Mumbai.
5. Guard File.
6. Spare copy.